

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

PAUL DUMOND,)	
)	DOCKET NO.: SPT-2001-3
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

The above-entitled appeal was heard on February 8, 2002, in the City of Hamilton, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

Paul Dumond (the Taxpayer) presented testimony in support of his appeal. The Department of Revenue (DOR), represented by Jim Fairbanks, Regional Lead, Debbie Reesman, Unit Manager and Dennis Vick, Customer Assistance, presented testimony in opposition to the appeal. In addition to testimony, exhibits were received in evidence. Mr. Dumond is the appellant in this proceeding and, therefore, has the burden of proof. Based on the evidence, this Board finds as follows:

STATEMENT OF THE ISSUES

The issue before the Board is whether the Taxpayer timely filed his applications for property tax assistance for 2001 within the meaning of Section 15-6-191, MCA and ¶ 42.19.401 ARM.

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The Taxpayer signed and dated two applications titled "Application For Property Tax Assistance Program" on January 20, 2001.

3. The applications are stamped "Received" on January 20, 2001.

4. By letter dated June 15, 2001 the DOR denied the Taxpayer's request stating, "*Income information not provided timely*".

5. The Taxpayer appealed that decision by filing with the county clerk and recorder a property tax appeal form which was received on August 14, 2001 and forwarded to the Board on September 18, 2001.

TAXPAYER'S CONTENTIONS

The Taxpayer contends that, based on past practices of DOR personnel and with the advice and approval of DOR personnel, he timely filed his applications for property tax assistance and supplied requisite financial information also in a timely manner. In support of his contentions, the Taxpayer offered the following testimony and evidence.

The Taxpayer filed two applications for property tax assistance on January 20, 2001 because his one piece of property actually is located in two school districts. The requisite financial information was not included because his tax return, including Schedule C, was not completed at that date. He testified that this was the procedure he followed in the past two years and his requests for assistance had been approved. He supplied financial information from Schedule C when it was available on or prior to April 15 of those years. A sticky note on an application stated "Need Income". On both applications was a note or writing stating that a copy of Schedule C would be sent after it was completed. The Taxpayer stated similar notes were included on applications filed for the past two years and he had been told to include the financial information when he received it from his accountant. The Taxpayer called DOR personnel and told them because of travel plans he would have to file for a tax extension in 2001

and would file his tax return and financial information when he returned. He testified that he was told by the DOR that that was okay but the information was needed by October 15 before his tax bill would go out. While the Taxpayer was gone, apparently a letter was sent to him dated May 2, 2001 by the DOR stating the requisite financial information had to be received within 10 days or the application for assistance would be denied. On June 15, 2001 the DOR sent a letter to the Taxpayer denying his request for tax assistance because "Income information not provided timely." No information about the Taxpayer's appeal rights was included as part of or with this letter. The Taxpayer testified that he saw this letter around July 20, 2001 after he had returned. Subsequently, the Schedule C was completed and faxed to the DOR by the Taxpayer's accountant. After a later conversation with the DOR the Taxpayer was informed of his appeal rights and given an appeal form. This appeal form was filed with the clerk and recorder's office on August 14, 2001 and forwarded to the Board on September 18, 2001.

DOR'S CONTENTIONS

The DOR contends the Taxpayer did not file applications for property tax assistance with requisite financial information in a timely manner and that it properly denied the

applications. In support of its contentions, the DOR offered the following testimony and evidence.

Pursuant to Section 15-6-191 MCA and ¶ 42.19.401 ARM, the applications had to be received by March 15, 2001. However, "understanding that many people don't file income taxes until a month later, we over the years, have allowed some people some time." Further DOR testified "We've had to come up with a procedure that's more definitive so that you know exactly when the last date is but we can't extend on into August or September into the fall because that detracts from the tax base." The Taxpayer is one of two people who received the May 2, 2001 letter from DOR who was denied property tax assistance because it asserted the financial information was not timely submitted.

BOARD'S DISCUSSION

The Taxpayer's appeal to the Board was timely under the provisions of Section 15-2-302 MCA. The Taxpayer apparently did not receive the DOR's June 15 letter, which was its final decision, until after he returned from his travels on July 20, 2001. This letter did not inform him of his right to appeal to this Board and he did not know of that right until subsequently advised by the DOR when it sent him the appeal form. That form was sent by the Taxpayer to the clerk and recorder's office and received by it August 14, 2001. The clerk and recorder's

office did not forward the appeal form to the Board until the Board received it on September 18, 2001. The Board's conclusion on this issue is that the Taxpayer's appeal was timely filed with the Board. For the remainder of the Board's discussion of this appeal, see Cynthia E. Taylor vs. Department of Revenue of the State of Montana, Docket No.: SPT-2001-2 dated the 12th day of March, 2002, (Taylor) a copy of which is attached hereto as Attachment A and incorporated herein by reference. In Taylor the Board decided the issue present in this appeal. Both of these appeals were heard the same day and the DOR was represented by the same personnel in both. As discussed here and in Taylor the Taxpayer timely filed his applications for property tax assistance for 2001 within the meaning of Section 15-6-19, MCA and ¶ 42.19.401 ARM.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter in accordance with Section 15-2-302, MCA.
2. The Board shall give an administrative rule full effect unless the Board finds a rule arbitrary, capricious or otherwise unlawful. Section 15-2-301(4), MCA.
3. The appeal of the Taxpayer is hereby granted and the decision of the DOR is reversed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the Taxpayer's Application For Property Tax Assistance for 2001 shall be approved.

DATED this 14th day of March, 2002.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JEREANN NELSON, Member

MICHAEL J. MULRONEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of March, 2002, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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